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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1930

No. 176

EDWARD A. PAGEL, AS ADMINISTRATOR OF THE ESTATE OF JACOB E. HALLBOM, DECEDENT, PETITIONER,

vs.

JOHN G. MACLEAN, ADMINISTRATOR OF SELMA HALLBOM

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MINNESOTA

PETITION FOR CERTIORARI FILED JUNE 3, 1930

CERTIORARI GRANTED OCTOBER 13, 1930

(35,098)

( )

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1929

No.

EDWARD A. PAGEL, AS ADMINISTRATOR OF THE ESTATE OF JACOB E. HALLBOM, DECEDENT, PETITIONER,

vs.

SELMA HALLBOM

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MINNESOTA

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[fol. 1]

IN PROBATE COURT OF KANDIYOHI COUNTY

In the Matter of the Estate of JACOB E. HALLBOM, Also Known as JACOB ENOCK HALLBOM, Decedent

AMENDED FINAL ACCOUNT AND PETITION FOR SETTLEMENT

Your petitioner respectfully represents and shows to the court:

First. That he is the surviving representative of the estate of the above named decedent.

Second. That as such representative he has fully administered the said estate, has paid and satisfied all claims against said estate allowed by the court, and has in all things complied with the orders of this court in said matter and with the law relating thereto.

Third. That he herewith renders his final account of his said administration, which is as follows, to-wit:

[fol. 2]

Receipts

Personal property described in the inventory	$994.49
Cash from other sources: Received World War Veterans' Insurance from U. S. Veterans' Bureau, June 25, 1928	9,116.00
Total receipts from all sources	$10,110.49

Disbursements

II. Expenses of Administration

Loss from sales of personal property at less than appraised valuation	$173.92
Cash paid for publication of orders	21.60
Expenses of representative	26.60
Compensation of representative	50.00
Fees of attorney	125.00
Expenses of attorney	13.50
Total expense of administration	$410.62

III. Expenses of Last Sickness

Cash paid for medical attendance and hospital	$556.55
Total expense of last sickness	$556.55

IV. Funeral Expenses

Cash paid for undertaker	$265.00
Total funeral expenses	$265.00

VI. Claims of Creditors

Claims of creditors as allowed by the court as follows: [fol. 3] 6-22-26, including interest thereon to Aug. 25, 1928:

Claim No.	Name of claimant	Amount allowed	
1.	Fred Hallbom	$720.07	$814.03
2.	Fred Hallbom, Jr., by Fred Hallbom, Sr.	112.78	127.40
3.	Peter Hallbom	49.95	56.34
4.	G. A. Stark	144.09	162.88
5.	Peter Hallbom	259.16	292.96
6.	Peter Hallbom	856.15	967.86
7.	Peter Hallbom	10.00	11.31
8.	Peter Hallbom	38.50	43.46
9.	Johnson & Larson Lumber Company	198.30	224.14
10.	Strong Motor Company	39.64	44.73
11.	Holm Brothers	472.97	534.57
12.	Farmers State Bank of New London	452.71	511.70
	Total amount of claims to be paid and settled		$3,791.38

NOTE.—The above claims have not been paid by the administrator by reason of the fact that parties have appeared in open court and personally objected to payment of claims from funds derived from U. S. War Veterans' Insurance and your representative desired to withhold such payment until said question has been settled.

Recapitulation

Total receipts from all sources	$10,110.40	
Total disbursements and credits as [fol. 4] follows:		
2. Expenses of administration		$410.62
3. Expenses of last sickness		556.55
4. Funeral expenses		265.00
6. Claims of creditors		3,791.38
8. Residue of personal property for distribution		5,086.94
Total	$10,110.49	$10,110.49

Fourth. That there is also belonging to said estate for distribution certain real estate as follows:

The homestead of said decedent, in the county of —— state of Minnesota, described as follows: ——.

All lands described in inventory were lost through foreclosures.

Fourth-A. Personal property for distribution consists of the following items: Cash in lawful money of the United States, $5,086.94.

Fifth. That said decedent died on the 20th day of October, 1925, intestate, and left him surviving his parents, Peter J. Hallbom and Selma Hallbom, the said Peter J. Hallbom being now deceased, who are all the heirs at law of said decedent, and the persons entitled to the residue of said estate.

Wherefore, your petitioner prays the order of this court fixing a time and place for the hearing of this petition and an examination of his final account, and the settlement and allowance of the same; and that upon said hearing [fol. 5] the court issue its final decree assigning the residue of said estate to the persons thereunto entitled.

Dated July 21st, 1928.

Edward A. Pagel, Petitioner.

Duly sworn to by Edward A. Pagel. Jurat omitted in printing.

[fol. 6] IN PROBATE COURT OF KANDIYOHI COUNTY

[Title omitted]

ORDER ALLOWING FINAL ACCOUNT

The above entitled matter came on to be heard on the 23rd day of July, 1928, upon the petition of the representative of the above named estate praying for the allowance of his final account and for distribution of the residue of said estate.

The said representative appeared in person and by his attorney, Chas. A. Swenson, Esq.

The court after due consideration of said petition, the evidence adduced in support thereof, and the files and records in said matter, finds the following facts:

First. That due notice of said hearing of said petition has been given as required by law by the publication of the citation of this court, for said hearing, dated the 23rd day of March, 1928, in the Atwater Republican Press, and by mailed notice as provided by the rules of this court.

Second. That the said final account set forth in said petition has been examined, adjusted and settled by the court, and as so adjusted and settled, is hereby found to be cor-
[fol. 7] rect; a summary statement of which account is as follows, to-wit:

Receipts

Personal estate as described in the inventory	$994.49
Received World War Veterans' Insurance from U. S. Veterans' Bureau, June 25, 1928	9,116.00
Total receipts from all sources	$10,110.49

Disbursements and Credits

Expenses of administration	$410.62
Expenses of last sickness	556.55
Funeral expenses	265.00
Claims of creditors of decedent	3,791.38
Residue on hand for distribution	5,086.94
Total credits	$10,110.49

Third. That all taxes, including personal property taxes, assessed against said estate, have been paid so far as there were funds of said estate to pay the same.

Fourth. As a conclusion from the foregoing facts, it is hereby ordered, that said account, as adjusted by the court, be, and the same hereby is, settled and allowed as and for the final account of said representative of said estate.

Dated July 23rd, 1928.
By the Court:

E. L. Rodegeb, Probate Judge. (Seal.)

[fol. 8] In Probate Court of Kandiyohi County

[Title omitted]

Notice of Appeal to District Court

Notice is hereby given, that Selma Hallbom, being aggrieved by the order of the Honorable E. L. Rodegeb, of the Probate Court of the county of Kandiyohi, Minnesota, made on the 23rd day of July, A. D. 1928, allowing the final account of the representative of the estate of said Jacob E. Hallbom, hereby appeals therefrom to the District Court of the Twelfth Judicial District, in and for said county of Kandiyohi.

Dated the 17th day of August, A. D. 1928.

L. J. Van Fossen and Orin M. Oulman, Attorneys for Appellant.

To Chas. A. Swenson, Esq., attorney for representative of said estate.

[fol. 9] In District Court of Kandiyohi County, 12th Judicial District

In re Estate of Jacob E. Hallbom, Decedent

Selma Hallbom, Respondent,

vs.

Edward A. Pagel, Administrator, Appellant

Proposed Case

A case containing all the evidence including all exhibits offered or introduced on the trial of this cause and all objections, rulings, orders, and other proceedings at the trial,

The cause came on for trial before the Honorable Harold Baker, one of the judges of this court, without a jury, on the 23rd day of October, 1928, being an appeal from the Probate Court of Kandiyohi county, Minnesota, by Selma Hallbom through her guardian, Clara M. Hallbom, to this court from the order of said Probate Court allowing the final account of Edward A. Pagel, administrator of the estate of Jacob E. Hallbom, decedent.

Orin M. Oulman appeared as attorney for Selma Hallbom, appellant, and Chas. A. Swenson appeared at attorney for the administrator of the estate of Jacob E. Hallbom, [fol. 10] decedent. Whereupon, on said date, the following proceedings were had:

A jury was waived by all parties and the case was submitted to the court on the following stipulated facts, the return of the Probate Court, and the following exhibits which were introduced and admitted in evidence.

AGREEMENT AS TO THE FACTS INVOLVED

This is an appeal by Selma Hallbom, through her guardian, Clara M. Hallbom, to the District Court of Kandiyohi county, from the order of the Probate Court of said county allowing the final account of the administrator of the estate of Jacob E. Hallbom, also known as Jacob Enoch Hallbom, decedent, dated the 23rd day of July, 1928.

There were claims of creditors filed against said estate in the amount of $3,354.32, which were allowed by the said Probate Court as valid claims against said estate on the 22nd day of June, 1926.

The administrator in his final account showed disbursements in payment of claims of creditors of said decedent in the amount of $3,791.38, which represents the said claims of creditors, plus interest, and made his final account for the purpose of having said Probate Court make its order thereon and to set running the time in which parties interested might appeal from said order allowing said final account.

[fol. 11] In the final account is found the following statement relative to the alleged payment of said claims of creditors:

"The claims have not been paid by the administrator by reason of the fact that parties have appeared in open court and personally objected to payment of claims from funds derived from U. S. War Veterans Insurance and your representative desired to withhold such payment until said question has been settled."

The administrator's final account showed that he had received from the World War Veterans Bureau war risk life insurance upon the life of said decedent in the amount of $9,116.00.

The account of the administrator was thus filed in Probate Court for the purpose of having same become final and binding upon all parties unless appealed from within thirty days, and notice of said final order allowing said final account was served upon all interested parties.

Jacob E. Hallbom was a soldier in the United States Army in 1917 in France and while in such service he took out a policy of war risk life insurance in the sum of $10,000.00, payable in case of his death to his father, Peter J. Hallbom.

On the 20th day of October, 1925, said Jacob E. Hallbom died and was at that time a resident of Kandiyohi county, Minnesota.

Thereafter his father, Peter J. Hallbom, was awarded the insurance, payable in 240 monthly payments, and the War Veterans Bureau continued thereafter to make said [fol. 12] monthly payments to him until his death, which occurred on the 22nd day of February, 1928.

At the time of Jacob E. Hallbom's death, his father, Peter J. Hallbom, and his mother, Selma Hallbom, were living.

Peter J. Hallbom, the father, was survived by his wife, Selma Hallbom, in whose behalf this appeal is taken, and he was also survived by several children.

Before paying the remainder of said insurance the United States Veterans Bureau required the appointment of an administrator of the estate of Jacob E. Hallbom and a submission to the bureau of certified copies of letters of administration and certified copies of other instruments of record in the Probate Court, which were duly submitted as theretofore an administrator of said estate had been appointed.

Upon due proof of the above having been presented to said bureau it paid to Edward Pagel, administrator of the estate of Jacob E. Hallbom, the sum of $9,116.00, the manner of such payment being check on the treasurer of the United States, which check is still held by the said administrator.

The said Selma Hallbom is the mother and an heir-at-law of said Jacob E. Hallbom and appeals from the order of the said Probate Court subjecting the said insurance fund at $9,116.00 to the payment of claims of creditors of said Jacob E. Hallbom.

[fol. 13] The application of Jacob E. Hallbom for war risk insurance contains the following:

"In case any beneficiary die or become disqualified after becoming entitled to an installment but before receiving all installments, the remaining installments are to be paid to such person or persons within the permitted class of beneficiaries as may be designated in my last will and testament, or in the absence of such will as would under the laws of my place of residence, be entitled to my personal property in case of intestacy."

The certificate issued to the said Jacob E. Hallbom by the Bureau of War Risk Insurance is as follows:

"The United States of America, Treasury Department,
Bureau of War Risk Insurance, Washington, D. C.

Certificate No. 116,516

Date insurance effective: Nov. 1, 1917.

This Certifies That Jacob Enoch Hallbom has applied for insurance in the amount of $10,000, payable in case of death or total permanent disability in monthly installments of $57.50.

Subject to the payment of the premiums required, this insurance is granted under the authority of an Act amending 'An Act entitled "An Act to authorize the establishment of a Bureau of War Risk Insurance in the Treasury Department," approved September 2, 1914, and for other purposes,' approved October 6, 1917, and subject in all re-
[fol. 14] spects to the provisions of such act, of any amend-

ments thereto, and of all regulations thereunder, now in force or hereafter adopted, all of which, together with the application for this insurance, and the terms and conditions published under authority of the Act, shall constitute the contract.

W. G. McAdoo, Secretary of the Treasury. William C. DeLanoy, Director of the Bureau of War Risk Insurance.

Countersigned at Washington, D. C. S. Robbin, Registrar."

On the back of said certificate under the heading, "Important Notice," is found the following:

"The insured may change the beneficiary without the consent of such beneficiary. This insurance is not assignable and is not subject to the claims of the creditors of the insured or of the beneficiaries.

"Should a claim arise under this certificate you are requested to write direct to the Bureau of War Risk Insurance, Treasury Department, Washington, D. C., in order to secure a prompt settlement. There will be no expenses in connection with proving a claim and collecting the amount due, other than small fees to notaries. It will not be necessary to consult or employ an attorney, claim agent, or other person to secure benefits under this certificate."

It is stipulated that the foregoing and the return of the Probate Court and any exhibits which may be introduced [fol. 15] are to be considered as the agreed statement of facts in this appeal.

Dated October 23rd, 1928.

(Signed) Chas. A. Swenson, Attorney for Estate of Jacob E. Hallbom. (Signed) Orin M. Oulman, Attorney for Appellant.

STATEMENT RE PLAINTIFF'S EXHIBIT "A"

NOTE.—Plaintiff's Exhibit "A" is set out verbatim in the stipulation and agreement as to the facts.

PLAINTIFF'S EXHIBIT "B"

Washington, D. C., June 22, 1928.

1; 380, 398.
United States Veterans Bureau. 1.
Treasurer of the United States. 15-51.
Pay in dollars ninety-one hundred sixteen, $9,116.00, to the order of Edward Pagel, admr. of est. of Jacob E. Hallbom, Atwater, Minn.
20-1-229121.
XC-1239301.
Object for which drawn: Mil. & Nav. Insurance.
Wm. H. Holmes, Disbursing Clerk, by E. Murray, Deputy Disbursing Clerk. 11-006.

[fol. 16] IN DISTRICT COURT OF KANDIYOHI COUNTY

STIPULATION FOR SETTLING CASE

It is hereby stipulated between the plaintiff and the defendant that the foregoing proposed case consisting of five pages of typewritten matter, and Plaintiff's Exhibits "A" and "B," together with the return of the Probate Court, may be taken as conformable to the truth and as containing all the evidence offered or introduced at the trial of said cause, and all objections, rulings, orders, and all other proceedings of said trial, and that the same may be settled and allowed as the settled case herein by the Honorable Harold Baker, judge, without further notice.

Orin M. Oulman, Attorney for Plaintiff Selma Hallbom. Chas. A. Swenson, Attorney for the Estate of Jacob E. Hallbom, Decedent, and Edward A. Pagel, Administrator.

IN DISTRICT COURT OF KANDIYOHI COUNTY

ORDER SETTLING CASE

I hereby certify that I have examined the foregoing settled case, consisting of five typewritten pages and Plain-

tiff's Exhibts "A" and "B," and have found the same to contain all the evidence produced on the trial of the above action, and all offers of evidence, rulings thereon, exceptions taken and all other proceedings had or taken on the trial of said cause, and that the same is in all respects conformable to the truth, and the same is hereby settled and [fol. 17] signed, as and for the settled case in this action.

Dated August 29, 1929.

Harold Baker, District Judge.

IN DISTRICT COURT OF KANDIYOHI COUNTY

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This is an appeal by Selma Hallbom, through her guardian, Clara M. Hallbom, to this court from the order of the Probate Court of Kandiyohi county, allowing the final account of the administrator of the estate of Jacob E. Hallbom, decedent, dated the 23rd day of July, 1928. The same being regularly upon the general term calendar of this court, came on for trial on the 23rd day of October, 1928, before the undersigned, one of the judges of said court, and was submitted on an agreed statement of facts.

Orin M. Oulman appeared for the appellant and Charles A. Swenson appeared for the administrator and estate of Jacob E. Hallbom.

After having heard the evidence and arguments of counsel the court makes the following:

Findings of Fact

1. That Jacob E. Hallbom, also known as Jacob Enoch Hallbom, was in 1917 a soldier in the United States army in France and while in such service he took out a policy of War Risk Life Insurance in the sum of $10,000.00, payable in case of his death to his father, Peter J. Hallbom.

[fol. 18] 2. That this application for such insurance contained the following:

"In case any beneficiary die or become disqualified after becoming entitled to an installment but before receiving all

installments, the remaining installments are to be paid to such person or persons within the permitted class of beneficiaries as may be designated in my last will and testament, or in the absence of such will, as would under the laws of my place of residence be entitled to my personal property in case of intestacy."

3. That the certificate issued to him, the said Jacob E. Hallbom, by the Bureau of War Risk Insurance is as follows:

"The United States of America, Treasury Department, Bureau of War Risk Insurance, Washington, D. C.

Certificate No. 116,516

Date insurance effective: Nov. 1, 1917.

This Certifies That Jacob Enock Hallbom has applied for insurance in the amount of $10,000, payable in case of death or total permanent disability in monthly installments of $57.50.

Subject to the payment of the premiums required, this insurance is granted under the authority of an Act amending 'An Act entitled "An Act to authorize the establishment of a Bureau of War Risk Insurance in the Treasury Department," approved September 2, 1914, and for other purposes,' approved October 6, 1917, and subject in all respects to the provisions of such Act, of any amendments [fol. 19] thereto, and of all regulations thereunder, now in force or hereafter adopted, all of which, together with the application for this insurance, and the terms and conditions published under authority of the Act, shall constitute the contract.

W. G. McAdoo, Secretary of the Treasury. William C. DeLanoy, Director of the Bureau of War Risk Insurance.

Countersigned at Washington, D. C. S. Robbin, Registrar."

4. That on the back of said certificate under the heading "Important Notice" is the following:

"The insured may change the beneficiary without the consent of such beneficiary. This insurance is not assignable

and is not subject to the claims of the creditors of the insured or of the beneficiaries."

5. That on the 20th day of October, 1925, said Jacob E. Hallbom died and was at that time a resident of Kandiyohi county, Minnesota, and left surviving him his father, Peter J. Hallbom, and his mother, Selma Hallbom, and at the time of his death his father, Peter J. Hallbom, was still the designated beneficiary in said certificate of insurance.

6. That after the death of said Jacob E. Hallbom, his father, Peter J. Hallbom, was awarded the insurance, payable in two hundred forty monthly payments, and the War Veterans Bureau continued thereafter to make said monthly [fol. 20] payments to him until his death, which occurred on the 22nd day of February, 1928.

7. That Peter J. Hallbom was survived by his wife, Selma Hallbom, and several children, who were brothers and sisters of the said Jacob E. Hallbom.

8. That upon the death of the said beneficiary Peter J. Hallbom, steps were taken to probate the estate of said Jacob E. Hallbom, and one Edward Pagel was appointed administrator thereof and upon due proof of his appointment as such administrator having been presented to the Bureau of War Risk Insurance it paid to him, as such administrator, the sum of $9,116.00, which was the amount at that time still owing on said certificate of insurance, the manner of such payment being a check on the treasurer of the United States, which check is still held by said administrator.

9. That the said Probate Court of Kandiyohi county made its order allowing the final account of the administrator of the estate of said Jacob E. Hallbom and subjecting the said insurance fund of $9,116.00 to the payment of claims of creditors of said Jacob E. Hallbom.

Conclusions of Law

That the insurance fund in question is held by the administrator of the estate of Jacob E. Hallbom as a mere trustee for the purpose of passing it on to those entitled

thereto, who take same as beneficiaries under the said contract of insurance.

That the insurance money in question is not subject to the claims of creditors of the insured, Jacob E. Hallbom, or of any of the ultimate beneficiaries.

[fol. 21] That the Probate Court of Kandiyohi county should ascertain the parties to whom this insurance fund should be paid and the proportion thereof and thereupon the administrator of the estate of Jacob E. Hallbom should pay to such persons the proportionate share of said insurance fund as determined by the said Probate Court.

That the appellant, Selma Hallbom, is entitled to the judgment of this court, reversing the order of the said Probate Court as heretofore entered, allowing the final account of the administrator of said estate, and remanding the case to the said Probate Court for further proceedings in accordance with these conclusions of law and with the judgment to be entered herein.

Let judgment be entered accordingly.

Dated this 1st day of February, 1929.

By the Court:

Harold Baker, Judge.

Respondent is granted a 30 day stay.

IN DISTRICT COURT OF KANDIYOHI COUNTY

MEMORANDUM

In order to determine the question arising in this appeal it is necessary to look to the provisions contained in the War Risk Insurance Act, which was a war measure passed in the exercise of a power, to which all other rights and powers are subservient.

Furthermore the Constitution of the United States provides that:

"This Constitution, and the laws of the United States [fol. 22] which shall be made in pursuance thereof * * * shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any state to the contrary notwithstanding" (Par. 2, Art. 4).

The primary object of Congress in creating War Risk Insurance should be kept in mind. In the Act of Oct. 6, 1917, c. 105, sec. 2, 40 Stats. 409, Barnes Fed. C. 10306, the purpose is stated to be "to give every commissioned officer and enlisted man when employed in active service under the War Department or Navy Department greater protection for themselves and their dependents without medical examination."

The very certificate of insurance which was issued and delivered to Jacob E. Hallbom stated thereon that such insurance was "not subject to the claims of the creditors of the insured or of the beneficiaries" and without doubt he went to his grave firm in the belief that this insurance would be paid to his next of kin without first being subjected to the claims of his creditors or of the irs.

Said Act also provided at the time he was granted his certificate of insurance, and still provides that any insurance paid under and by virtue of such certificate of insurance "shall not be subject to the claims of creditors of any person to whom an award is made * * * and shall be exempt from all taxation" (See 38 U. S. C. A., Section 454).

Previous to March 4th, 1925, if a designated beneficiary survived the insured but died before receiving all of the [fol. 23] installments, then the remaining installments were paid by the War Risk Insurance Bureau to "such person or persons within the permitted class of beneficiaries as would under the laws of the insured's place of residence be entitled to his personal property in case of intestacy." See regulations of the War Risk Insurance Bureau, Bulletin 1, issued Oct. 15, 1917, p. 4.

By Act of Congress of March 4th, 1925, the statute relative to said War Risk Insurance was amended to read as follows:

"If no person within the permitted class be designated as beneficiary * * * by the insured either in his lifetime or by his last will and testament or if the designated beneficiary does not survive the insured or survives the insured and dies prior to receiving all of the two hundred and forty installments or all such as are payable and applicable, there shall be paid to the estate of the insured the present value of the monthly installments thereafter payable. * * *

When any person to whom such insurance was awarded prior to such date dies or forfeits his rights to such insurance then there shall be paid to the estate of the insured the present value of the remaining unpaid monthly installments of insurance so awarded to such person."

Act June 7, 1924, c. 320, Sec. 303.
43 Stats. 625, March 4, 1925, c. 553, Sec. 14, 43 Stats. 1310, Barnes Fed. C. (1926 Cum. Supp.) 10438, 38 U. S. C. A., Sec. 514.

[fol. 24] After the passage of the above amendment the War Risk Insurance Bureau, in cases wherein the designated beneficiary survived the insured but died before receiving all of the installments, paid the remaining installments to the administrator of the estate of the insured.

The above procedure applies to unconverted insurance, which is the kind of insurance involved in the instant case.

It is quite evident that the government in making payments to beneficiaries named in the certificates of War Risk Insurance found great difficulty in ascertaining the beneficiaries as such beneficiaries had to be ascertained and determined from time to time according to the laws of the forty-eight states and it is but reasonable to conclude that to obviate this difficulty the government caused to be enacted the statute hereinbefore mentioned on March 4th, 1925.

Several courts in other jurisdictions have held in effect that it was but reasonable to assume that the government, by the amendment of March 4th, 1925, did not intend to do violence to the substantial terms of the contract of insurance but did intend to obviate the difficulty of ascertaining and making payments to beneficiaries, and for that purpose directed that the money still owing on the contract of insurance should be paid to the estate of the soldier—that is, to the legal representative thereof—and that said representative should pay and distribute said money among the beneficiaries, who are entitled thereto under the terms of [fol. 25] the contract of insurance.

It is, therefore, plainly apparent from the laws relative to this insurance that it was never the intention of Congress to vest any of this insurance in the estate of the insured so

as to subject it to the payment of the claims of his creditors or of the creditors of his beneficiaries.

The Supreme Court of Alabama (110 So. 403) in passing upon a question similar to that involved in the instant case aptly said that "an analogy is presented under our law in case of damages awarded to an administrator in actions for death by wrongful act. He is a mere trustee or conduit to receive and pass on the funds to those entitled, free from the debts of the decedent."

It also appears that it has been the general policy of the government in passing legislation pertaining to pensions, bounties, bonuses, veterans' relief and insurance during and since Civil War days and down through World War legislation to provide for and to make such payments to the soldier or to his dependents or to his beneficiaries free from the claims of creditors.

Taking into consideration the history of this legislation and the laws now in force relative to this insurance and the contract of insurance which, as the certificate states, is composed of the application for the insurance, the law then in force, or any amendments thereto, and all regulations of the War Risk Insurance Bureau thereunder, it seems but reasonable and just to hold that the administrator holds the insurance fund involved in the instant case as a mere trus-[fol. 26] tee for the purpose of delivering same into the hands of the ultimate beneficiaries in such proportion as the Probate Court shall determine, being guided thereby by the intestate laws of this state applicable to the descent of personal property.

Harold Baker.

IN DISTRICT COURT OF KANDIYOHI COUNTY

JUDGMENT

The above entitled action came on for trial before the above named court on the 23rd day of October, 1928, and the court, after hearing the evidence adduced at said trial and being fully advised in the premises, did, on the 1st day of February, 1929, make its findings and order for judgment herein, and same were filed on the 5th day of February, 1929.

Now pursuant to said order and on motion of L. J. Van Fossen and Orin M. Oulman, attorneys for Selma Hallbom, appellant, it is hereby adjudged in favor of appellant that the order of the Probate Court of the county of Kandiyohi, Minnesota, allowing the final account of the administrator of the estate of said Jacob E. Hallbom herein appealed from, be and is hereby reversed and said cause remanded to the Probate Court for further proceedings in accordance with the conclusions of law and judgment herein.

By the Court:

Ed Sanderson, Clerk of District Court.

[fol. 27] In District Court of Kandiyohi County

Notice of Appeal

To L. J. Van Fossen and Orin M. Oulman, attorneys for the above-named respondent, and to Ed Sanderson, clerk of said District Court:

Please take notice, that the administrator of the estate of Jacob E. Hallbom, the above named decedent, appeals to the Supreme Court of the state of Minnesota, from the judgment of the said District Court entered herein on the 6th day of July, A. D. 1929, reversing the order of the Probate Court of the county of Kandiyohi and state of Minnesota, made on the 23rd day of July, 1928, allowing the final account of the representative of the above named estate, and from the whole thereof.

Dated this 10th day of August, A. D. 1929.

Chas. A. Swenson, Atwater, Minnesota, Attorney for Edward A. Pagel, Administrator of the Estate of Jacob E. Hallbom, Decedent.

[fol. 28] IN SUPREME COURT OF MINNESOTA

Wilson, C. J.

No. 22. 27721

In re Estate of Jacob E. Hallbom, Decedent

SELMA HALLBOM, Respondent,

vs.

EDWARD A. PAGEL, Administrator, Appellant

Syllabus

1. Rules and regulations prescribed by a department of government in pursuance of statutory authority have the force of law.

2. Proceeds of war risk insurance policy held payable after death of beneficiary to estate of insured for distribution to such persons then living who are within the permitted class of beneficiaries described in the act, as would be entitled to insured's personal property under state laws in case of intestacy; and that such persons take as beneficiaries and not as heirs at law.

3. The determination of the parties who are to receive such money is not in the first instance exclusively for the probate court but may be determined by the district court when the question arises therein.

Affirmed with directions.

OPINION—Filed Feb. 21, 1930

Jacob E. Hallbom was a soldier in our army in the world war. While in foreign service he took out a policy of war risk life insurance in the sum of $10,000.00 naming his father, Peter J. Hallbom, as beneficiary. The insured died October 20, 1925. The father, and his wife, Selma Hallbom, the mother, survived. The insurance was awarded to the father payable in 240 monthly payments, and the War Veterans Bureau continually made these payments until the father's death on February 22, 1928. The father

was survived by his said wife and several children who were brothers and sisters of the insured. Edward Pagel [fol. 29] was then appointed administrator of the soldier's estate and as such he was paid $9,116.00, the commuted amount of the policy.

The insured left creditors whose claims were allowed against his estate in the sum of $3,791.38. The assets of the estate, excluding the $9,116.00, were insufficient to pay the expense of administration and the creditors. The administrator realizing that interested parties were opposed to the insurance money being used for such purposes filed for approval a final account, in which he proposed to so use such money. The probate court approved the account. Selma Hallbom appealed to district court and that court held that (1) the administrator was only a trustee of the funds, (2) the money was not subject to the claims of creditors, (3) that probate court should ascertain to whom the money was to be paid, and (4) that the order of the probate court allowing the final account was reversed. Judgment was entered. The administrator has appealed from such judgment.

The act of October 6, 1917 provides for insurance "in order to give to every commissioned officer and enlisted man * * * greater protection for themselves and their dependents." 40 Stat. 409, Chap. 105, § 400. This purpose is reaffirmed in the act of June 7, 1924, 43 Stat. Chap. 320, § 300. 38 U. S. C. A. 245, § 511. It was restated in the act of March 4, 1925, 43 Stat. 1308, § 12.

The act of June 7, 1924, provides that the insurance shall not be subject to the claims of creditors of any persons to whom an award is made; and shall be exempt from taxation. 43 Stat. 613, § 22, 38 U. S. C. A. 217, § 454.

The policy issued in this case contained an endorsement "Important Notice," under which it was stated:

"This insurance * * * is not subject to the claims of creditors of the insured or of the beneficiary."

The statute authorizes the department to make rules and regulations to carry out the purposes of the law. This was done. They provided that:

"If no beneficiary within the permitted class be designated by the insured * * * or if any above designated

beneficiary * * * does not survive the insured the insurance (or if any above designated beneficiary shall sur-
[fol. 30] vive the insured, but shall not receive all the installments then the remaining installments) shall be payable to such person or persons within the permitted class of beneficiaries as would under the laws of the insured's place of residence be entitled to his personal property in case of intestacy." Bulletin 1, p. 4, issued October 15, 1917.

The application for insurance, which is made a part of his contract of insurance, provides:

"In case any beneficiary die or become disqualified after becoming entitled to an installment, but before receiving all installments, the remaining installments are to be paid to such person or persons within the permitted class of beneficiaries as may be designated in my last will and testament, or in the absence of such will, as would under the laws of my place of residence be entitled to my personal property in case of intestacy."

The insurance is payable only to a spouse, child, grandchild, parent, brother, sister, uncle, aunt, nephew, niece, brother-in-law, or sister-in-law, or to any or all of them. 38 U. S. C. A. 245, § 511.

"If no person within the permitted class be designated as beneficiary * * * by the insured either in his lifetime or by his last will and testament or if the designated beneficiary does not survive the insured or survives the insured and dies prior to receiving all of the two hundred and forty installments or all such as are payable and applicable, there shall be paid to the estate of the insured the present value of the monthly installments thereafter payable * * *.

"When any person to whom such insurance was awarded prior to such date dies or forfeits his rights to such insurance, then there shall be paid to the estate of the insured the present value of the remaining unpaid monthly installments of insurance so awarded to such person." 38 U. S. C. A. 252, § 514.

The foregoing provision is by the statute made effective as of October 6, 1917.

We thus come to the point where the money became payable to "the estate of the insured." That has been done. The administrator has received the money. Is it an asset of the estate for use as such or is it property belonging to certain beneficiaries and merely held by the administrator in trust?

1. The rules and regulations prescribed by a department of government in pursuance of statutory authority have the force of law. Cassarello v. U. S., 271 Fed. 486.

[fol. 31] 2. If the insurance in such a case as this is to become a part of the estate and as such go to the heirs at law it will frequently go to persons outside "the permitted class." It would also be liable for the payment of debts though the act specifically provides otherwise. This insurance was never provided for the benefit of creditors. It was expressly designed for the service man and his next of kin dependents. Having in mind the repeatedly expressed and obvious purpose of the act, we are of the opinion that reason and principle require us to hold, as we do, that the payment of the funds to the estate of the insured is merely a matter of procedure and the representative of the estate is to distribute it only to persons included "within the permitted class." The persons who would receive the money receive it as beneficiaries under the policy and not as heirs at law. Cassarello v. U. S., 271 Fed. 486; in re Cross Estate, 278 P. 414; Wilson v. Sawyer, 6 S. W. (2nd) 825, Perrydore v. Hester, 110 So. 403; Tax Commission of Ohio v. Rife, 162 N. E. 390; in re Wanzel's Estate, 145 A. 512; Watkins v. Hall, 147 S. E. 876; Payne v. Jordan, 110 S. E. 4, 138 S. E. 262; Sutton's Executor v. Barr's Administrator, 293 S. W. 1075. There are cases to the contrary. Whaley v. Jones, 149 S. E. 841 and cases therein cited. Hugus v. U. S., 24 Fed. (2nd) 247. In re Greiner's Estate, 218 N. W. 437; Condon v. Mallan, 30 Fed. (2nd) 995; Branch Banking and Trust Co. v. Brinkley, 144 S. E. 530; National Union Bank v. McNeal, 145 S. E. 549. In re Hester case:

"An analogy is presented under our law in case of damages awarded to an administrator in actions for death by wrongful act. He is a mere trustee or conduit to receive

and pass on the funds to those entitled, free from the debts of the decedent."

It is also analagous to our statutory provision that all moneys payable to a wife or child from insurance upon the life of a deceased husband or father, not exceeding $10,000.00, are exempt. G. S. 1923, § 9447, sub. 14. Doubtless the government can handle the matter more expeditiously [fol. 32] by paying the money to the representative of the estate who will distribute it under the supervision of the local courts rather than to undertake the determination of the existing and particular beneficiaries "within the permitted class." Such insurance contains a contractual relation and the terms of the agreement dictate the same conclusion. In re Sabin's Estate, 227 N. Y. Sup. 120.

Such insurance in a measure was adopted as a substitute for unsatisfactory pension legislation for the benefit of those named. It was furnished at less than cost to a particular class. In the instant case the service man's father, who received payments for a few months, did not inherit the insurance. He received those payments by virtue of his seniority and the absence of others in "the permitted class." Upon his death his name automatically dropped from the roll of "the permitted class" and the next name thereon is the mother. Such insurance money is to be distributed to those living at the time of the distribution who come within "the permitted class" in the order of their priority under the laws of the descent of personal property in this state.

3. The question of determining the descent of this money under the state law is not the primary question to be decided. It is necessary in such a case to determine what person or persons within "the permitted class" would be entitled to the insured's personal property in case of intestacy. There is no more reason for directing the probate court to determine that question than for the district court to call upon the probate court to determine who the heirs are that are to receive the money in cases of death by wrongful act. This may be done by the district court. Indeed, in this case the stipulation showed that Selma Hallbom was the only person who under our view of the law is to receive the money. To the extent that the judgment

determines that this money goes to the beneficiary and not to the heirs at law and that it is not subject to the claim of creditors it is affirmed. The cause is remanded with directions to the trial court to modify the order for judg-
[fol. 33] ment and the judgment in accordance with the views herein expressed, thereby eliminating the necessity for the probate court to make any further determination.

Affirmed with directions.

Wilson, C. J.

[File endorsement omitted.]

[fol. 34] IN SUPREME COURT OF MINNESOTA

27721

In re Estate of Jacob E. Hallbom, Decedent

SELMA HALLBOM, Respondent,

vs.

EDWARD A. PAGEL, Administrator, Appellant

JUDGMENT—Filed March 4, 1930

Pursuant to an order of Court heretofore duly made and entered in this cause it is determined and adjudged that the Judgment of the Court below, herein appealed from, to-wit, of the District Court within and for the County of Kandiyohi be and the same hereby is in all things affirmed, with directions,

Dated and signed March 4th, A. D. 1930.

By the Court.

Attest:

Grace Kaercher Davis, Clerk of Supreme Court Minn. (Supreme Court Seal.)

[File endorsement omitted.]

[fol. 35] IN SUPREME COURT OF MINNESOTA

[Title omitted]

PRÆCIPE FOR TRANSCRIPT OF RECORD—Filed April 30, 1930

To the Clerk of the Minnesota Supreme Court:

You are hereby requested to make a transcript of the record of this cause to be used in an application to the

Supreme Court of the United States for a Writ of Certiorari in said cause, the transcript to consist of:

The Record on Appeal in said cause;

The opinion of the Supreme Court of the State of Minnesota;

All journal entries contained in the records and proceedings of the Supreme Court of the State of Minnesota, relating to said cause;

The final judgment and decision of the Supreme Court of the State of Minnesota;

Your certificate to the record that it is a complete record in said cause.

Chas. A. Swenson, Attorney for Appellant, Atwater, Minnesota.

Dated April 25, 1930.

[File endorsement omitted.]

[fol. 36] Clerk's certificate to foregoing transcript omitted in printing.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 13, 1930

The petition herein for a writ of certiorari to the Supreme Court of the State of Minnesota is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

PETITION FOR A WRIT OF CERTIORARI

FILE COPY

Office Supreme Court
FILED
JUN 3 19
CHARLES ELMORE C
CL

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1930.

No. 176

EDWARD A. PAGEL, AS ADMINISTRATOR OF THE ESTATE OF JACOB E. HALLBOM, DECEDENT, PETITIONER,

vs.

SELMA HALLBOM.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MINNESOTA AND BRIEF IN SUPPORT THEREOF.

HENRY T. RONNING,
Counsel for Petitioner,
Willmar, Minnesota.
CHAS. A. SWENSON,
Atwater, Minnesota,
Of Counsel.

(35,098)

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1930.

No. 176

EDWARD A. PAGEL, AS ADMINISTRATOR OF THE ESTATE OF JACOB E. HALLBOM, DECEDENT, PETITIONER,

vs.

SELMA HALLBOM.

PETITION FOR WRIT OR CERTIORARI.

MAY IT PLEASE THE COURT:

The petition of Edward A. Pagel, as administrator of the estate of Jacob E. Hallbom, decedent, respectfully shows to this Honorable Court:

A.

Summary Statement of the Matter Involved.

This case involves the distribution of the sum of nine thousand one hundred sixteen ($9,116.00) dollars, paid by the United States Veterans' Bureau to the

estate of Jacob E. Hallbom, decedent, of which estate your petitioner is the administrator, and which sum represented the commuted value of unpaid installments of War Risk Insurance.

Your petitioner asks for a review of the decision of the Supreme Court of the State of Minnesota holding, in effect, that said sum did not become a part of the estate the same as other assets; that those entitled to said sum take the same as beneficiaries and not as heirs-at-law; that payment of said sum to the estate of the insured is merely a matter of procedure; that the same is not subject to the payment of claims filed against the estate of the deceased insured; and that the same is to be distributed to those living at the time of distribution who come within "the permitted class" in the order of their priority under the laws of descent of personal property in the State of Minnesota.

The facts were stipulated in the District Court (R. 6), and upon such stipulation, the return of the Probate Court which included the amended final account and petition for settlement by the administrator (R. 1), and the order of the Probate Court allowing the final account (R. 4), and upon plaintiff's Exhibit "A" (R. 9) and (R. 8) and plaintiff's Exhibit "B" (R. 10), the District Court made its findings of fact and conclusions of law (R. 11) and ordered judgment of reversal as aforesaid, which judgment was sustained by the Minnesota Supreme Court (R. 24 and R. 19).

Concisely stated, the facts are as follows:

One Jacob E. Hallbom, also known as Jacob Enock Hallbom, in the year 1917, was a soldier in the United States Army in France, and while in such service he

applied for and was granted a Government War Risk Insurance certificate in the sum of ten thousand ($10,000.00) dollars, payable, in case of death, to his father, Peter J. Hallbom, which certificate is set out *verbatim* in the record, as Plaintiff's Exhibit "A" (R. 8).

On the 20th day of October, 1925, the said Jacob E. Hallbom died, being then a resident of Kandiyohi County, Minnesota, and left surviving him his father, Peter J. Hallbom, and his mother, Selma Hallbom. At the time of the death of Jacob E. Hallbom, his father, Peter J. Hallbom, was still the designated beneficiary in said certificate of insurance.

After the death of said Jacob E. Hallbom, the beneficiary, Peter J. Hallbom, was awarded the insurance, payable in two hundred and forty (240) monthly installments, and the War Veterans' Bureau continued thereafter to make said monthly payments to him until his death, which occurred on the 22nd day of February, 1928. Peter J. Hallbom left him surviving his wife, Selma Hallbom, the respondent herein, and several children.

Upon the death of the said beneficiary, Peter J. Hallbom, steps were taken to probate the estate of said Jacob E. Hallbom, and one Edward A. Pagel was appointed administrator thereof and upon due proof of his appointment as such administrator having been presented to the Bureau of War Risk Insurance, it paid to him, as such administrator, the sum of nine thousand one hundred sixteen ($9,116.00) dollars, which was the amount at that time still owing on said certificate of insurance, the manner of such payment

being a check on the treasurer of the United States, which check was dated June 22, 1928, and is set out *verbatim* in the record as Plaintiff's Exhibit "B" (R. 10).

On June 22, 1926, the Probate Court allowed claims against the estate of Jacob E. Hallbom which aggregated the sum of three thousand three hundred fifty-four and 32/100 ($3,354.32) dollars (R. 2).

The administrator in due course filed his final account with the Probate Court, which account is found in the record (R. 1) and shows that there were not sufficient other assets, besides the sum received from the Bureau of War Risk Insurance, with which to pay a part of the expenses of last sickness and no part of the claims, and that the administrator proposed to subject said sum to payment of balance of expenses of last sickness and all of the claims, in other words, to treat said fund the same as other assets of the estate. This account was allowed by the Probate Court by its order dated July 23, 1928, which order is also set out in the record (R. 4). Selma Hallbom, the widow of Peter J. Hallbom, appealed to the District Court (R. 5) from this order, where the same was reversed (R. 11), and judgment entered (R. 17).

Your petitioner, as administrator, then appealed from said judgment to the Supreme Court of the State of Minnesota (R. 18), which court upheld the District Court (R. 24).

B.

Reasons Relied on for the Allowance of the Writ.

(1) The Supreme Court of the State of Minnesota, in making the decision referred to, decided a Federal question of substance not theretofore determined by your Court.

(2) The said decision of the Supreme Court of the State of Minnesota involved a distribution of a sum paid by the United States Veterans' Bureau to the administrator of the estate of the deceased soldier as the commuted value of unpaid installments under a War Risk Insurance certificate after the death of the designated beneficiary under authority and by virtue of Section 9127½-303 U. S. Compiled Statutes, 1925, which provides as follows:

> "9127½-303. PAYMENT OF INSURANCE TO ESTATE OF DECEASED BENEFICIARY; ESCHEAT TO UNITED STATES.—If no person within the permitted class be designated as beneficiary for yearly renewable term insurance by the insured either in his lifetime or by his last will and testament or if the designated beneficiary does not survive the insured or survives the insured and dies prior to receiving all of the two hundred and forty installments or all such as are payable and applicable, there shall be paid to the estate of the insured the present value of the monthly installments thereafter payable, said value to be computed as of date of last payment made under any existing award; *Provided*, That all awards of yearly renewable term in-

surance which are in course of payment on the date of the approval of this Act shall continue until the death of the person receiving such payments, or until he forfeits same under the provisions of this Act. When any person to whom such insurance is now awarded dies or forfeits his rights to such insurance then there shall be paid to the estate of the insured the present value of the remaining unpaid monthly installments of the insurance so awarded to such person; *Provided, further,* That no award of yearly renewable term insurance which has been made to the estate of a last surviving beneficiary shall be affected by this amendment: *Provided, further,* That in cases when the estate of an insured would escheat under the laws of the place of his residence the insurance shall not be paid to the estate but shall escheat to the United States and be credited to the military and naval insurance appropriation. This section shall be deemed to be in effect as of October 6, 1917 (June 7, 1924, c. 320, p. 303, 43 Stat. 625, amended March 4, 1925, c. 553, p. 14, 43 Stat. 1310)."

(3) Your petitioner respectfully contends:

(*a*) That the sum in question paid to this petitioner as administrator, under authority of the statutory provision set out in paragraph (2), became a part of the estate the same as other assets.

(*b*) That the ultimate recipients of said sum take the same as heirs-at-law, under state intestate laws, in the same proportion as they take other assets of the estate.

(*c*) That the ultimate recipients do not take said sum as beneficiaries limited to persons "within the permitted class."

(*d*) That said sum is subject to claims filed and allowed against said estate.

(*e*) That the heirs-at-law are determined as of the date of death of the insured veteran.

WHEREFORE your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the Supreme Court of the State of Minnesota, commanding that court to certify and to send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket No. 27721, *In re* ESTATE OF JACOB E. HALLBOM, Decedent; SELMA HALLBOM, Respondent, *vs.* EDWARD A. PAGEL, ADMINISTRATOR, Appellant, and that the said decree of the Supreme Court of the State of Minnesota may be reversed by this Honorable Court, and that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem meet and just; and your petitioner will ever pray.

EDWARD A. PAGEL,
By HENRY T. RONNING,
Counsel for the Petitioner.
CHAS. A. SWENSON,
Of Counsel.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1930.

No. 176

EDWARD A. PAGEL, AS ADMINISTRATOR OF THE ESTATE OF JACOB E. HALLBOM, DECEDENT, PETITIONER,

vs.

SELMA HALLBOM.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

The Opinion of the Court Below.

The opinion in the Supreme Court of Minnesota is reported in Northwestern Reporter as *In re* Hallbom's Estate; Hallbom *v.* Pagel, 229 N. W. 344, decided by the Supreme Court of Minnesota February 21, 1930 (R. 19).

II.

Jurisdiction.

1. Your petitioner respectfully maintains that jurisdiction by this Court in this case is sustained by U. S.

Compiled Statutes, 1925 Supplement, Sec. 1214 (Judicial Code, Section 236, as amended by the Act of February 13, 1925, 43 Stats. 937).

2. The date of the judgment to be reviewed is March 4, 1930 (R. 24).

3. The nature of the case and of the rulings below were such as to bring the case within the jurisdictional provision relied on because it is one wherein a final judgment has been rendered by the Supreme Court of the State of Minnesota, which is the highest court of that State in which a decision could be had, and a right is set up and claimed by your petitioner under a statute of the United States, to wit, Section 9127½-303 U. S. Compiled Statutes, 1925, which is set out *verbatim* under heading "B" in the petition and, in the interest of brevity, the same is not repeated here. The right claimed is that the money in question is an asset of the estate for use as such and to be administered in accordance with the intestate laws of the State of Minnesota and the residue to be distributed to the heirs-at-law of the decedent to be determined as of the date of his death.

4. While the following cases are not in point so far as facts involved are concerned, your petitioner believes they sustain the jurisdiction:

Plowden Weston et al. plaintiffs in error *vs. The City Council of Charleston*, defendants, 2 Pet. 449, 7 L. Ed. 481: In this case it is held that "Final Judgment" applies to all judgments and decrees which determine the particular cause; it is not required that judgments shall finally decide upon the rights which are litigated.

Kentucky vs. Powers, 201 U. S. 1: In this case the court holds that a writ of error will lie to the highest court of a State entitled to pass upon the claim.

Miedreich vs. Lauenstein, 232 U. S. 236: In this case it is held that where a state court holds that a federal question is made before it, according to its practice, and proceeds to determine it, this Court will regard the question as duly made.

Green Bay & Mississippi Canal Company vs. Patten Paper Company, 172 U. S. 58: This case holds that an allegation that a claim is founded on certain acts of Congress is sufficient.

III.

Statement of the Case.

A full statement of the case has been given under heading "A" in the petition and, in the interest of brevity, the statement is not repeated at this point.

IV.

Specification of Errors.

1. The Supreme Court of Minnesota erred in finding and holding that the payment of the funds to the estate of the insured is merely a matter of procedure and the representative of the estate is to distribute it only to persons included "within the permitted class" (R. 22).

2. The Supreme Court of Minnesota erred in finding and holding that the persons who would receive the

money receive it as beneficiaries under the policy and not as heirs-at-law (R. 22).

3. The Supreme Court of Minnesota erred in finding and holding that it is also analogous to our (State of Minnesota) statutory provision that all moneys payable to a wife or child from insurance upon the life of a deceased husband or father, not exceeding $10,000.00, is exempt. G. S. 1923 No. 9447, Sub. 14 (R. 23).

4. The Supreme Court of Minnesota erred in finding and holding that "Such insurance money is to be distributed to those living at the time of the distribution who come within 'the permitted class' in the order of their priority under the laws of the descent of personal property in this State" (R. 23).

5. The Supreme Court of Minnesota erred in finding and holding that the question of determining the descent of this money under the State law is not the primary question to be decided (R. 23).

6. The Supreme Court of Minnesota erred in finding and holding that "It is necessary in such a case to determine what person, or persons, within 'the permitted class' would be entitled to the insured's personal property in case of intestacy" (R. 23).

7. The Supreme Court of Minnesota erred in finding and holding that the money is not subject to the claims of creditors (R. 24).

8. The Supreme Court of Minnesota erred in affirming the judgment of the district court below (R. 24).

V.

ARGUMENT.

Summary of the Argument.

Point A. The statute involved is clear and unambiguous and within the constitutional authority of Congress.

Point B. The decision below is contrary to and in conflict with prior Federal and State court decisions.

Point A.

The statute is clear and unambiguous and within the constitutional authority of Congress.

The United States Veterans' Bureau paid the fund in question to the administrator under authority and by virtue of Section 9127½-303 U. S. Compiled Statutes, 1925, which statute is set out *verbatim* under heading "B" in the petition and in the interest of brevity the same is not repeated here.

Your petitioner, as administrator, made his final account (R. 1) upon the theory that the fund in question became a part of the estate the same as other assets, and this theory was approved by the Probate Court (R. 4). The Probate Court was reversed by the District Court (R. 17) and the latter sustained by the Supreme Court of the State of Minnesota (R. 24).

The language of the statute in question and above cited is perfectly plain, certain, definite and unam-

biguous—the remainder of the fund is to be paid to the estate of the deceased. There can be but one intent of Congress deduced from this language, viz., that the remainder is to become a part of decedent's estate, the same as other assets, to be administered under the laws of the State of domicile of the decedent at the time of his death. Any other intent on the part of Congress must be read into the act by construction. Resort to construction may be had only when the language of an act is uncertain, indefinite and ambiguous.

In re Singer's Estate, 192 Wis. 524, 213 N. W. 479, a case where the act in question was under consideration, the court held:

> "The present worth of monthly installments payable after the death of the insured is, in the event the beneficiary shall die, to be paid 'to the estate of the insured', and in this case the government has paid the amount to the administrator of the estate of the insured. The only question then remaining to be determined is who are the distributees of the estate of the insured, and it is very vigorously argued that, having in mind the purpose of the insurance, that is, the general protection of the insured and his dependents, it should be held in this case, that the father, who is the only one who may be considered in any legal sense dependent, is entitled to receive the whole of the estate, because such was the intention of the Congress. The intention of the lawmaking power must be ascertained from the language used to express that intention, and it is only when the language used is uncertain, indefinite, or ambiguous that

resort may be had to construction. Here the language of the act is perfectly plain—the remainder of the fund is to be paid to the estate of the deceased. Hence there is no room for the application of rules of construction. The intent of the lawmaking power is that which is found clearly expressed in the language used in the act. Whether it be considered, as said in the White Case, supra, that the contract be a contract of insurance or a pension, or partakes somewhat of both, its disposition in the event of death is clearly indicated. Immediately upon the death of the insured the title to his estate vested in his heirs. Caldwell & Gates Co. *v.* Mennes, 190 Wis. 551, 209 N. W. 588."

The Supreme Court of Iowa in the case of *In re Pivonka's Estate,* 211 N. W. 247, in dealing with a similar state of facts as in the case at bar, in the course of its opinion said:

> "Congress undoubtedly had the power to have made disposition of the uncollected installments of War Risk Insurance, upon the death of the first named beneficiary. It did so by providing that, upon the death of said beneficiary, the unaccumulated installments should be paid to the estate of the deceased soldier. It would therefore be disposed of as assets of the estate of said decedent and as of the date of the death of said decedent."

The Supreme Court of the United States in the case of *White vs. United States,* 270 U. S. 175, 70 L. Ed. 530, decided March 1, 1926, passed upon the contract between the insured and the Government under War

Risk Insurance and held that under said contract no beneficiary or any particular class of beneficiaries, had any vested rights. In this case, George White, soldier, took out ten thousand ($10,000) dollars War Risk Insurance on July 1, 1918. Died October 4, 1918. Mother named beneficiary, but by a letter of the soldier, later established as his will, he provided one-half of that sum should be paid to his aunt. She was not within permitted class at time, but became so by Act of December 24, 1919. Installments paid to mother through January, 1921. Then suspended as to one-half, which was given to aunt. Action by mother for whole. The court said:

> "The certificate of insurance provided in terms that it should be 'subject in all respects to the provisions of such act (of 1917), of any amendments thereto, and of all regulations thereunder, now in force or hereafter adopted, all of which, together with the application for this insurance, and the terms and conditions published under authority of the act, shall constitute the contract'. These words must be taken to embrace changes in the law no less than changes in the regulations. The form was established by the director with the approval of the secretary of the treasury and on the authority of Art. 1, paragraph 1, and Article IV, paragraph 402, of the act, which, we have no doubt, authorized it. The language is very broad and does not need precise discussion when the nature of the plan is remembered. The insurance was a contract, to be sure, for which a premium was paid, but it was not one entered into by the United States for a gain.

All soldiers were given the right to it and the relation of the Government to them if not paternal was at least avuncular. It was a relation of benevolence established by the Government at considerable cost to itself for the soldiers' good. It was a new experiment in which changes might be found necessary, or at least, as in this case, feasible more exactly to carry out his will. If the soldier was willing to put himself into the Government's hands to that extent no one else could complain. The only relations of contract were between the Government and him. White's mother's interest at his death was vested only so far as he and the Government had made it so, and was subject to any conditions upon which they might agree. They did agree to terms that cut her rights down to one-half. She is a volunteer and she cannot claim more."

In the case of *Hugus vs. United States*, 24 F. (2nd) 247 (Texas), decided February 24, 1928, an attempt was made to read into present statutes a construction from former statutes. This was an action brought by father of deceased soldier for one-half of insurance allotment which was paid by the Government to the mother, claiming that Congress intended in enacting 305 of World War Veterans Act of 1924, as amended July 2, 1926 (38 U. S. C. A., No. 516), "Dependent mother and father" instead of "Dependent mother or father" on two contentions.

(*a*) Prior legislation treated dependent parents in the same manner, and it is therefore to be presumed that Congress intended to con-

tinue such treatment;

(*b*) When both context and connection show that "and" should be used instead of "or" it will be substituted by the court.

The court refused to so construe the statutes and said:

> "The court is not a *cousor morum*. The court merely ascertains the intention of the lawmaker from the text, and, if the text is unambiguous there is no reason for construction."

In re Ogelvie's Estate, 139 Atl. 826, 291 Pa. 326, decided December 5, 1927. In this case the soldier died in August, 1918, carrying War Risk Insurance. The soldier's father, who was named beneficiary, died in September, 1920, and the soldier's mother died June 1925.

The soldier made a will wherein his fiancee was named sole legatee. Held: That the fiancee and sole legatee under the will of deceased soldier was entitled to proceeds of War Risk Insurance payable under soldier's estate after the death of beneficiary, although the fiancee was not within the permitted class.

In this case the court particularly discredits the logic in the *Sutton vs. Barr,* Kentucky case, 293 S. W. 1075.

Referring to the act of March 4, 1925, the court holds:

> "The latter act was a carefully drawn statute, its language is plain and the presumption is that Congress expressed what it intended. It is an elementary rule of statutory construction

that a change of language indicates a change of legislative intent; also that, where statutes conflict, the latter governs; hence, as the act of 1925 is inconsistent with prior statutes, it controls. The latter act being complete, we can not read into it the inconsistent language of prior legislation.''

O'Quain vs. U. S., 28 F. (2nd) 350 (D. C. Louisiana), decided July 26, 1928. Plaintiff sues to recover War Risk Insurance upon life of her illegitimate son, John C. Broussard. She was not named as beneficiary. Court holds:

''(6) I have not overlooked the provisions of Section 12 of the Act of March 4, 1925, 33 Stat., p. 1308 (Title 38, p. 511, U. S. C.), amending Section 300 of the War Veterans' Act of June 7, 1924, which read: 'The insurance shall be payable only to a spouse, child, grandchild, parent, brother, sister, uncle, aunt, nephew, niece, brother-in-law, or sister-in-law, or to any or all of them and also during total and permanent disability to the injured person'. However, this section must be read in connection with Section 14 of the same act (43 Stat., p. 1310; title 38, p. 514, U. S. C.), which specifically provides that, 'If no person within the permitted class be designated as beneficiary for yearly renewable term insurance by the insured, either in his lifetime or by his last will and testament,' etc., the same shall be paid to his estate. The two provisions are easily reconcilable by holding that the first (Section 12) merely intended to name those classes eligible as beneficiaries, and not to give any of them

> the substantive right to claim the insurance without being named as such beneficiaries, except as the same may be accorded by the law of the state where the insured was domiciled at the time of his death.'

This case is affirmed in *O'Quain vs. U. S.*, 31 F. (2nd) 756.

McDaniel vs. Sloan (Supreme Court of Tennessee), 11 S. W. (2nd) 894, decided December 8, 1928.

Thomas L. Cole, a soldier in the World War, effected War Risk Insurance on his life, naming his father, James Cole, as beneficiary. Soldier later married and thereafter died, leaving Mamie Evans Cole as his widow. She later married. The beneficiary, after collecting several years' installments under the policy, died. Insurance paid to administrator of soldier's estate and held for distribution. Held widow entitled to insurance.

The court held:

> "Neither the policy nor the federal statutes are controlling, further than that the World War Veterans' Act of 1924 (38 U. S. C. A., p. 514) provides that, 'when any person to whom such insurance was awarded prior to such date, dies or forfeits his rights to such insurance then there shall be paid to the estate of the insured the present value of the remaining unpaid monthly installments of the insurance.' This provision as we have seen, has been complied with.
>
> "Looking to the Tennessee statute governing the distribution of the estate of one who dies intestate, it is seen that Section 4172 of Shan-

non's Code, reads as follows: 'The personal estate as to which any person dies intestate, AFTER THE PAYMENT OF DEBTS AND CHARGES AGAINST THE ESTATE, shall be distributed as follows: * * * (2) to the widow altogether, if there are no children nor the descendants of children.' ''

The foregoing cases taken from decisions of the courts where the Act of March 4, 1925, has been passed upon, show that, not only did Congress have the power to pass the act in question, but Congress meant exactly what the language of the act imports, viz.: That upon the death of a designated beneficiary or beneficiaries, under War Risk Insurance, the unpaid remainder becomes a part of the estate of the insured the same as other personal property. The decisions cited also show that the Act is not subject to construction. However, if we trace the history of the Act of March 4, 1925, so far as the clause making the balance payable to the estate of the insured is concerned, it conclusively shows that Congress could have had no other intent.

Prior to the amendment, the act read as follows so far as we are concerned in this case:

> "If no person within the permitted class of beneficiaries survive the insured, or if before the completion of payments the beneficiary or beneficiaries shall die and there be no surviving person within said permitted class, then there shall be paid to the estate of the insured the present value of the monthly installments thereafter payable under the provisions of this title."
>
> Act of June 7, 1924, C. 320, Sec. 303, 43 Stat. 625.

The last cited act was the first provision made by Congress for payment of a remainder of War Risk Insurance to the estate of the insured. It should be noted that the money was not paid to the estate unless "there be no surviving person within said permitted class." It can not well be contended that Congress intended, when the payment to the estate clause was originally enacted, that the administrator who received a remainder, received the same merely for the purpose of passing the same on to beneficiaries within the permitted class, because the act itself specifically prohibited the payment of any remainder to the estate of the insured so long as any person within the permitted class survived. The only inference as to the intent of Congress which can be drawn from the Act of June 7th, 1924, is that when no person remained who was within the class permitted to be designated as a beneficiary under the insurance policy, the remainder was to be paid to the estate to become a part of and be distributed as other personal property.

When the Amendment of March 4th, 1925, was passed by Congress, and the scope for payment of a remainder to the estate of the insured was widened, it would seem that the only reasonable construction which can be made of the intent of Congress in passing the amendment, so far as the estate clause is concerned, was to retain its original meaning in making payment to the estate of the insured and to eliminate payment of insurance to any person within the class permitted to be designated as a beneficiary, unless such person

was designated in the insured's certificate or policy. In other words, that no person within the permitted class would receive any benefit from War Risk Insurance unless specifically designated as a beneficiary, except in so far as he might derive such benefit as an heir at law of the insured decedent.

This arrangement on the part of Congress became perfectly logical when one bears in mind that when the amendments in question were passed, the War Risk for which the insurance was originally issued, had long since ceased to exist, and those to whom such insurance had been issued had returned to private life and were in a position to take care of their dependents in the usual way. Under this arrangement, unless the insured had some one within the permitted class that he cared to designate as beneficiary, his insurance was a part of his estate and would be distributed as other property holdings of the insured.

Another strong indication that Congress could not have intended that an administrator, in receiving a remainder on a War Risk Insurance certificate, should act only as a trustee for the purpose of transmitting the same to beneficiaries "within the permitted class" is that it is easily conceivable that instances might arise where there would be no one "within the permitted class" to receive the same. Such a situation would arise every time, Chapter 206 of the Session Laws of Minnesota, 1927, which is known as Section 8720-1, Mason's Minnesota Statutes, 1927, becomes operative.

"8720-1. INHERITANCE BY STEP-PARENTS OF DECEASED WORLD WAR VETERANS IN RESPECT OF WAR

RISK INSURANCE.—In every case where a resident of the State of Minnesota shall have served in the military or naval forces of the United States during the recent World War, and shall either during such service or thereafter have died while his life was insured by the United States by War Risk Insurance, and at the time of such death heretofore or hereafter occurring shall have left surviving him a step-parent but no spouse, children, father, mother, grandchildren, brothers or sisters, nieces, nephews, or other natural heirs, such step-parents shall, in case the decedent shall have left surviving him no natural or adoptive parent or upon the death of such natural or adoptive parents, succeed to and be vested with all of the rights of inheritance and otherwise of a natural parent of such decedent in respect of such insurance and the proceeds therefrom in the same manner and to the same extent as if such step-parents were the natural and legitimate parent of such decedent at the time of such death."

See *Schroeder vs. United States,* 24 F. (2nd) 420 (Ohio), decided February 21, 1928.

Also *National Union Bank of Rock Hill vs. McNeal* (*supra*), 145 S. E. 549 (Supreme Court of S. C., Nov. 20, 1928).

Another very strong indication that it was the intent of Congress, when the remainder was paid to an estate, that the Government should release control of the same and that it thereafter became subject to the laws of the state of domicile of the insured decedent, is found in the Act of March 4th, 1925, itself, as found in paragraph 9127½-303, U. S. Compiled Statutes 1925, Cumu-

lative Supplement. The latter part of this act provides as follows:

> "*Provided, further,* that in cases when the estate of an insured would escheat under the laws of the place of his residence the insurance shall not be paid to the estate but shall escheat to the United States and be credited to the military and naval insurance appropriation. This section shall be deemed to be in effect as of October 6, 1917. (June 7, 1924, C. 320, Sec. 303, 43 Stat. 625, amended March 4, 1925, C. 553, Sec. 14, 43 Stat. 1310.)"

In that part of the act above cited, it will be noted that if the estate of the insured would escheat under the laws of the place of his residence, the insurance IS NOT paid to the estate, but escheats to the United States directly from the Veterans' Bureau. This shows that in passing the act in question, Congress imposed upon the United States Veterans' Bureau the duty to determine whether or not the balance of installments on insurance would escheat before paying the money over to the insured's estate, because in that case the act specifically states that the Government is not going to part with the funds. If it was not the intent of Congress that control of the remainder, after payment to the estate, be exclusively subject to the laws of the state of domicile, why did not Congress provide that in case the funds would escheat under the laws of the place of residence, then and in that case, the administrator of the estate of the insured veteran should re-

fund the moneys to the United States? This portion seems to clearly indicate that Congress was careful to provide that insurance money, such as that under consideration, should not pass out of the hands and out of the control of the Government as long as there was any possibility that Congress wanted the Government to have any further control of those funds.

Point B.

Conflict With Prior Federal and State Court Decisions.

a. The following cases hold that funds such as the one in question became a part of the estate the same as other assets:

In the case of *In re Singer's Estate*, 192 Wis. 524, 213 N.W. 479, hereinbefore cited, the court held:

> "It does not necessarily follow, however, that there was vested in the heirs any interest in this particular fund. What did vest was the right to the estate of the deceased, whatever it might be. The whole amount of the policy not having been paid to the beneficiary, the estate of the deceased was augmented by the present worth of future payments. * * * The mother having had a vested right to one-half of the estate, that right upon her death vested in her heirs, so that the trial court correctly held that the estate should be distributed, one-half to the father, Alex Singer, and one-half to the sisters and brother, as representatives of their deceased mother."

In the case of *In re Fink's Estate* (Wis.), 210 N. W. 834, one Ralph T. Fink, a soldier in the World War, took out a War Risk Insurance policy payable to his mother. She predeceased him, and he appointed no other beneficiary. Later Ralph died intestate leaving surviving him his father, Simon Fink, and two brothers. Ralph's estate was duly administered by his father, Simon, and the estate was assigned to him and he was discharged as administrator. Annual payments upon the policy were made to Simon as long as he lived. After Ralph's death, his father married again, and upon the latter's death, his widow, Minnie Fink, claimed the unpaid installments due upon the policy. The Court held:

> "Simon Fink was the sole heir-at-law of his son, Ralph, hence whatever comes into the estate of Ralph becomes the estate of Simon after his death. His estate is to be divided equally among his widow and two sons."

The case of *Whaley vs. Jones* (S. C.), 149 S. E. 841, is one wherein one John F. Sawyer while a soldier in the World War, was granted a War Risk Insurance on his life in the sum of ten thousand ($10,000) dollars. His mother, Eudora C. Sawyer, was the duly designated beneficiary. The insured died intestate in the County of Orangeberg, where he was domiciled, on December 3, 1922, leaving as his only heirs at law, his mother and his brothers and sisters.

The beneficiary, Mrs. Eudora Sawyer, received several monthly installments of said insurance but died about eighteen months after the death of the insured.

No other beneficiary was designated by the insured by will or otherwise.

The Government paid the commuted value of unpaid installments to the administratrix which amounted to $8,542.00, and also the further sum of $1,606.56, unpaid compensation due the insured. These funds constituted practically the entire estate of the insured; his other estate being insufficient to pay expenses of last illness, cost of administration, etc.

This case agrees with every contention of the administrator in the case at bar, supports his theory in every respect and so far as the funds become a part of the estate, the same as other assets is concerned, the court held:

> "We think it is settled, therefore, that upon the death of the designated beneficiary of the permitted class, the unpaid installments are payable to the insured's estate, and not to surviving members of the permitted class. * * * When these funds were paid to the estate of the insured, they ceased to be insurance or compensation, and became a part of the corpus of the estate of the insured."

In the Maine case of *In re Petition of Robbins*, 140 Atl. 366, decided February 7, 1928, the insured died September 24, 1918. He had two War Risk Insurance policies of five thousand ($5,000) dollars each. In one the mother was beneficiary. Mother died October 7, 1925. This case raised the question of distribution of proceeds of this policy which was paid by the Government to the administratrix of the estate of the soldier. Court says:

"So far as the Federal Government dealt with the insurance we hold its proceedings correct and unassailable.

"(1) Life insurance is a contract whereby one party insures a person against loss by the death of another.

"(2) In this case the Federal Government entered into a contract according to the terms of which, on the occurrence of the events that have admittedly transpired, the 'present value of the remaining unpaid monthly installments' was to be paid to the legal representative of the insured soldier. The Government made the computations, transmitted the funds, and relinquished control thereof.

"The administratrix found herself then the custodian of such present value in cash. Such money became in her hands a part of the corpus of decedent's estate, to be distributed according to the laws of this state, and we hold that Section 21, C. 80, R. S., applies and directs the administratrix to pay the same to Esther R. Phillips, the widow of the insured."

In the case of *In re Ogilvie's Estate,* 291 Pa. 326, hereinbefore cited under Point A, similarly holds that funds such as the one in question become a part of the assets of the estate.

So also the Louisiana case of *O'Quain vs. U. S.,* 28 Fed. (2nd) 350, hereinbefore cited under Point A.

So also the Tennessee case of *McDaniel vs. Sloan,* 11 S. W. (2nd) 894 hereinbefore cited under Point A.

In the Matter of Storum, 220 App. Div. 472, 221 N. Y. S. 771, a case involving funds similar to that in the case at bar, the court held:

> "Under said amendment the fund is payable to the estate of the insured. The distribution of the insured's estate is left to the Decedent Estate Law of the state."

In re Sabin's Estate, 227 N. Y. S. 120, 131 Misc. Rep. 451 (Surrogate Court, Lewis County, Feb. 3, 1928).

The Surrogate Court was reversed by the Supreme Court. Appellate Division, Fourth Department, May 12, 1928, 228 N. Y. S. 890. Held on reversal:

> "Order (131 Misc. Rep. 451, 227 N. Y. S. 120) reversed, with costs, and matter remitted to the Surrogate Court, to assess transfer tax in accordance with this decision, on the authority of Matter of Storum, 220 App. Div. 472, 221 N. Y. S. 771, and Matter of Ryan, 220 App. Div. 835, 222 N. Y. S. 891, affirming 129 Misc. Rep. 248, 222 N. Y. S. 253, on the opinion below. See also, Matter of Schaeffer, 130 Misc. Rep. 436, 224 N. Y. S. 305; Matter of Dean, 131 Misc. Rep. 125, 225 N. Y. S. 543; Matter of Shaw, note or reporter, 130 Misc. Rep. 440, 224 N. Y. S. 344, Chapter 844 of Laws of 1928, exempting from the application of the transfer tax provisions of the statutes all proceeds of any Federal War Risk Insurance policy of any veteran of the World War, which is payable or which may become payable to the estate of such veteran, became effective April 6, 1928, and has no application to this proceeding. All concur."

While the last mentioned case involved the payment of inheritance tax, upon inheritance from an estate which consisted of War Risk Insurance funds, the court could sustain the levying of such tax only on the

theory that such funds become a part of the estate the same as other assets.

Childers vs. Pollock (Ark.), 13 S. W. (2nd) 8, Syllabus:

> "Where husband died leaving policy of War Risk Insurance, one-fourth of which was payable to his mother in installments so long as she lived, and, at her death, balance, if any, to insured's estate, Held, that, on death of mother, commuted value of unpaid installments which would have been paid to her had she lived and which reverted to insured's estate was such an estate as entitled insured's wife to a dower interest therein, under Crawford and Mores Dig. #3535."

In course of opinion court said:

> "On his death his estate was immediately seized of the possibility that a portion of that fund would come to his estate, not as a remainder or reversion, but as a certainty, provided the fund was not consumed by the payment of installments during the lifetime of the mother. In other words, this possibility was an asset of the estate—personal property belonging to the estate, in which the widow was entitled to her dower interest when realized."

In re Greiner's Estate, 218 N. W. 437 (Wis.) decided March 6, 1928, the court in its opinion says:

> "The United States Veterans Bureau decided that the proceeds of the insurance policy in question should be paid to the estate of the deceased soldier, and it was accordingly so paid. It was

> the duty of the County Court to distribute it in accordance with the laws of this state. That court could not re-examine the question as to who was entitled to the insurance under the provisions of the federal law.
>
> "There being no contention that the County Court did not distribute the estate of Anton Greiner, Jr., in accordance with the laws of this state, the order must be affirmed. So ordered."

The case of *Condon vs. Mallan*, 30 F. (2nd) 995, App. D. C. involved the disposition to be made of the balance of the proceeds of a policy of War Risk Insurance upon the death of the beneficiary named in the policy. It was held that the law of District of Columbia, wherein insured under War Risk Insurance policy resided at date of death, was controlling in disposition of proceeds.

In the course of its opinion the court said:

> "After payment of the expenses of administering the estate, one-half of the balance of the fund should be distributed to the daughter of the deceased widow, and the other half to the sisters and half-sisters of Admiral Gill."

The case of *Bailey vs. Norman's Admr.*, 15 S. W. (2nd) 1005, 228 Ky. 790, while not exactly in point, indicates that the court considered balance of War Risk Insurance the same as other assets. In this case $7,489.00 War Risk Insurance was paid to insured's administrator in Kentucky. Widow claimed administration should be had in Illinois. In the course of its opinion the court said:

> "'(7) Under the law of Illinois the widow would get the whole fund in controversy. Under the law of Kentucky the widow gets one-half and the husband's next of kin the other half. The Circuit Court properly distributed the funds under the law of Kentucky. The allowance to the administrator and its attorneys was reasonable.'"

In the case of *Branch Banking and Trust Company vs. Brinkley,* 144 S. E. 530 (Supreme Court of N. C. decided Sept. 19, 1928), one Jack W. Montague received War Risk Insurance in the sum of $10,000.00, payable to his brother, John M. Montague, and his sister, Walina Petway. The insured was killed in action on September 26, 1918, while serving in the U. S. Army in France. His brother, John M. Montague, died from wounds received in action, on October 6th, 1918. Therefore the insured was survived by his brother, John M. Montague, and his sister, Walina Petway.

The court in the course of its opinion said:

> "Walina Petway therefore took the estate, *not as beneficiary,* but as distributee under the laws of North Carolina then in force."

National Union Bank of Rock Hill vs. McNeal, 145 S. E. 549 (Supreme Court of S. C., Nov. 20, 1928).

From this case it appears that one James W. Carter, colored, in 1917 inter-married Daisy McNeal, who had three illegitimate children. Later Carter was inducted into the United States Army and a $10,000.00

Government War Risk Insurance policy was issued to him wherein Daisy Carter was designated as the beneficiary. Carter died in January, 1918, and the beneficiary received monthly installments of $57.50 under said policy until her death on June 27th, 1920, and thereafter the computed unpaid installments of War Risk Insurance policy were paid in a lump sum to the estate of the insured.

In this case the court held that the mother inherited a part of the soldier's estate as the widow, although she was beneficiary under the policy until the time of her death and that upon her death her illegitimate children were entitled to share in the fund paid to the estate as heirs at law of their mother.

It may be noted that the ultimate recipients of the fund in this case were not within the designated class of beneficiaries under the Federal statutes.

In re Root's Estate, 226 N. W. 598 (N. D.) decided August 12, 1929, the soldier had War Risk Insurance payable to mother as beneficiary. Soldier died, leaving father and mother. Mother received installments until time of her death. In the meantime father and mother were divorced. Upon her death the Veterans Bureau paid residue to the soldier's estate. Held:

> "* * * These avails become as much a part of the estate as any other sums of money due and owing to the decedent at the time of his death."

b. The following cases hold that funds, such as the one in question, are subject to the payment of claims against the estate of the deceased insured, or if the pay-

ment of claims is not directly involved, the Court from its decisions on the point at issue could justify such decision only by holding, if the queston of payment of claims was presented to it, that such funds were subject to their payment.

In the South Carolina case of *Whaley vs. Jones,* 149 S. E. 841, hereinbefore referred to under subdivision *a* of Point B, in the course of its opinion holds:

> "(5) It will be observed that under the Act of March 4, 1925, the Congress undertook to impose no limitation whatsoever upon the funds in question after they were paid into the estate of the insured, except when the estate of the insured would escheat under the state law. Then, and in that, the escheat should be to the United States and not to the state. This being the only limitation, it follows therefore that the funds in question are assets in the hands of the administratrix to be administered in accordance with the laws of the state of South Carolina, and as such are liable and subject to the payment of the indebtedness of the insured."

From the Tennessee case of *McDaniel vs. Sloan,* 11 S. W. (2nd) 894, hereinbefore cited, the court holds as follows:

> "Looking to the Tennessee statute governing the distribution of the estate of one who dies intestate, it is seen that Section 4172 of Shannon's Code, reads as follows: 'The personal estate as to which any person dies intestate, AFTER THE PAYMENT OF THE DEBTS AND CHARGES AGAINST THE ESTATE, shall be distributed as follows: * * * (2) to the widow altogether,

> if there are no children nor the descendants of children.'"

In the case of *Condon vs. Mallan*, 30 F. (2nd) 995, hereinbefore cited, the court said:

> "After payment of the EXPENSES OF ADMINISTERING THE ESTATE, one-half of the balance of the fund should be distributed to the daughter of the deceased widow, and the other half to the sisters and half-sisters of Admiral Gill."

In the Kentucky case of *Bailey vs. Norman's Administrator*, 15 S. W. (2nd) 1005, 228 Ky. 790, hereinbefore cited under subdivision *a*, the court held:

> "The allowance to the administrator and its attorneys was reasonable."

In the Michigan case of *In re Dempster's Estate*, 226 N. W. 243, the court held:

> "In determining that the personal property of an intestate, subject to the payment of his lawful debts, is to be distributed among those persons who were his heirs at the time of his death, the foregoing cases are in full accord with the Michigan decisions: Richmond *v.* Railway Co., 87 Mich. 374, 49 N. W. 621; Parks *v.* Norris, 101 Mich. 71, 59 N. W. 428."

In the Matter of Storum, 221 N. Y. S. 771, hereinbefore cited, the court held: that a fund such as the one in question should be added to the estate and distributed according to Section 98 of the Decedent Estate Law, which reads as follows:

"Distribution of personal property of decedent. If the deceased died intestate, the surplus of his personal property AFTER PAYMENT OF DEBTS, and if he left a will, such surplus, after the payment of debts and legacies, if not bequeathed, must be distributed to his widow, children, or next of kin, in the manner following:"

It should be borne in mind in considering this subdivision, that it is reasonable to expect that every court holding that funds such as that in question become a part of the estate of the deceased soldier the same as any other asset, and which were considered under Subdivision *a*, would hold, if the question were presented to them, that such funds are subject to the claims of creditors against the estate of the insured, because it would seem that they could not justify a decision to the contrary and at the same time hold that such funds are a part of the estate.

c. The following cases hold that the heirs, or those entitled to the funds such as the one in question, are determined as of the date of the death of the insured.

In the South Carolina case of *Whaley vs. Jones*, 149 S. E. 841, hereinbefore cited, the court in the course of its opinion holds:

"In construing section 514 of title 38 of the Code of the United States (38 U. S. C. A. c. 514), this court has held that commuted unpaid installments paid to the estate of insured after death of designated beneficiary, in accordance with the provisions of said section, must be distributed to those who answer the description of

heirs or distributees at date of insured's death. Bank v. McNeal, 148 S. C. 30, 145 S. E. 549, 551. See, also, *In Re* Cross' Estate, 147 Wash. 441, 266 P. 711; Fink's Estate, 191 Wis. 349, 210 N. W. 834; *In re* Storum's Estate, 220 App. Div. 472, 221 N. Y. S. 771; Palmer *vs.* Mitchell, 117 Ohio St. 87, 158 N. E. 187, 55 A. L. R. 566; Petition of Robbins, 126 Me. 555, 140 A. 368; *In re* Ogelvie's Estate, 291 Pa. 326, 139 A. 826; O'Quain *v.* United States (D. C.) 28 F. (2nd) 350.

In the case of *In re Singer's Estate,* 192 Wis. 524, 213 N. W. 479, hereinbefore cited, the court held:

> "When this sum was paid to the administrator under the law, it must be distributed to his heir as of the date of his death."

In the Matter of Storum, 221 N. Y. S. 771, hereinbefore cited, the Court held:

> "* * * Nowhere in the act as amended is it provided that the distributees shall be determined as of the date of the death of the beneficiary named in the insurance certificate. Generally there can be no question but what a fund that comes into the estate of a decedent after his death should be added to the estate left by the decedent and distributed according to Section 98 of the Decedent Estate Law."

In the Ohio case of *Palmer vs. Mitchell,* 158 N. E. 187, decided June 15, 1927, involving funds similar to that in question, the court held:

> "We, therefore arrive at the conclusion that the lump sum representing the present value of monthly installments thereafter payable was properly paid the Federal Government to the administrator of Basil's (estate) and that the same should, in case of intestacy, be distributed to those who are entitled to his personal estate under the law as it existed at the time of Basil's death."

In the later Ohio case of *Tax Commissioner of Ohio vs. Rife et al.*, 162 N. E. 390, decided in June, 1928, the court sustains its former holding by inference.

In the Iowa case of *In re Pivonka's Estate*, 211 N. W. 247, in referring to a fund similar to that in question, Held:

> "It would therefore be disposed of as assets of the estate of said decedent and as of the date of the death of said decedent."

In the Wisconsin case of *In re Greiner's Estate*, 218 N. W. 437, the unpaid balance of War Risk Insurance was paid to the estate of the father of the insured veteran, although said father was named beneficiary in the policy and died after the date of death of the veteran, showing that the court held that those entitled to the fund were determined as of the date of the death of the veteran.

In re Ryan's Estate, 220 App. Div. 835, 222 N. Y. S. 253, the Surrogate Court holds similarly that War Risk Insurance goes to the estate to be distributed under Section 98, Decedent Estate Law, and this is affirmed App. Div. 222 N. Y. S. 891.

The Supreme Court of Tennessee in the case of *In re Smallwood's Estate,* 300 S. W. 572, holds similarly on this question.

Similarly the Michigan case of *In re Dempster's Estate,* 226 N. W. 243. In this case there was a contest between father of deceased soldier, insured under War Risk Insurance Act, and children, of the soldier's adopted mother. After the soldier died, the Michigan statutes were changed so as to provide that adopted parents became heirs at law of an adopted son. State statutes held not retroactive. At the time of the soldier's death, statutes held that father would be sole heir at law. Held: the latter statutes applied. In the course of its opinion the court said:

> "In determining that the personal property of an intestate, subject to the payment of his lawful debts, is to be distributed among those persons who were his heirs at the time of his death, the foregoing cases are in full accord with the Michigan decisions: Richmond *v.* Railway Co., 87 Mich. 374, 49 N. W. 621; Parks *v.* Norris, 101 Mich. 71, 59 N. W. 428."

See also the Ohio case of *Waltz vs. Waltz,* 166 N. E. 896, which cites the case of *Palmer vs. Mitchell* (*supra*).

From the District of Columbia case of *Condon vs. Mallan,* 30 F. (2nd) 995, may be gleaned the following: Distributees entitled to share in the balance of War Risk Insurance paid to the insured's administrator are determined as of the date of the insured's death.

Similarly the North Carolina case of *Branch Banking and Trust Company vs. Brinkley,* 196 N. C. 40, 144 S. E. 530, holds that distributees of the insured soldier are ascertained at time of his death.

In the South Carolina case of *National Union Bank of Rock Hill vs. McNeal*, 145 S. E. 549, the court holds in effect as follows: Funds paid to the estate of the insured under War Risk policy are to be distributed among heirs at law of the insured and as at the date of his death.

The court in the case of *In re Root's Estate*, 226 N. W. 598, (N. D.) hereinbefore cited, holds similarly that the distributees are determined as of the date of death of the deceased soldier.

Conclusion.

It is, therefore, respectfully submitted that this case is one calling for the exercise by this court of its supervisory power in order that the decision of the Minnesota Supreme Court may be made to conform with the decisions herein quoted and in order that your decision in this case may become a guide for the Supreme Courts of all the states in the United States and thereby establish uniformity of decisions throughout the United States on the points and questions involved, and that to such an end a writ of certiorari should be granted and this court should review the decision of the Supreme Court of the State of Minnesota and finally reverse it.

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